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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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16
17 **Scott Johnson,**

18 Plaintiff,

19 v.

20 **Alessandro F. Baglietto;**
21 **Nancy O. Baglietto;** and Does 1-10,

22 Defendants.

23
24 **Case No.**

25 **Complaint For Damages And**
26 **Injunctive Relief For Violations**
27 **Of: American's With Disabilities**
28 **Act; Unruh Civil Rights Act**

17 Plaintiff Scott Johnson complains of Alessandro F. Baglietto; Nancy O.
18 Baglietto; and Does 1-10 ("Defendants"), and alleges as follows:

19
20 **PARTIES:**

21 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
22 level C-5 quadriplegic. He cannot walk and also has significant manual
23 dexterity impairments. He uses a wheelchair for mobility and has a specially
24 equipped van.

25 2. Defendants Alessandro F. Baglietto and Nancy O. Baglietto owned the
26 real property located at or about 1580 El Camino Real, San Carlos, California,
27 in October 2018.

28 3. Defendants Alessandro F. Baglietto and Nancy O. Baglietto owned the

1 real property located at or about 1580 El Camino Real, San Carlos, California,
2 in April 2019.

3 4. Defendants Alessandro F. Baglietto and Nancy O. Baglietto own the real
4 property located at or about 1580 El Camino Real, San Carlos, California,
5 currently.

6 5. Plaintiff does not know the true names of Defendants, their business
7 capacities, their ownership connection to the property and business, or their
8 relative responsibilities in causing the access violations herein complained of,
9 and alleges a joint venture and common enterprise by all such Defendants.
10 Plaintiff is informed and believes that each of the Defendants herein,
11 including Does 1 through 10, inclusive, is responsible in some capacity for the
12 events herein alleged, or is a necessary party for obtaining appropriate relief.
13 Plaintiff will seek leave to amend when the true names, capacities,
14 connections, and responsibilities of the Defendants and Does 1 through 10,
15 inclusive, are ascertained.

16

17 **JURISDICTION & VENUE:**

18 6. The Court has subject matter jurisdiction over the action pursuant to 28
19 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
20 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21 7. Pursuant to supplemental jurisdiction, an attendant and related cause
22 of action, arising from the same nucleus of operative facts and arising out of
23 the same transactions, is also brought under California's Unruh Civil Rights
24 Act, which act expressly incorporates the Americans with Disabilities Act.

25 8. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.

1 **FACTUAL ALLEGATIONS:**

2 9. Plaintiff went to the property to visit Olsen Nolte Saddle Shop (“Store”)
3 in October 2018 and April 2019 with the intention to avail himself of its items,
4 motivated in part to determine if the defendants comply with the disability
5 access laws.

6 10. The Store is a facility open to the public, a place of public
7 accommodation, and a business establishment.

8 11. Unfortunately, on the dates of the plaintiff’s visits, the defendants failed
9 to provide accessible paths of travel leading into the Store.

10 12. On information and belief the defendants currently fail to provide
11 accessible paths of travel leading into the Store.

12 13. Additionally, on the dates of the plaintiff’s visits, the defendants failed
13 to provide accessible parking.

14 14. On information and belief the defendants currently fail to provide
15 accessible parking.

16 15. Plaintiff personally encountered these barriers.

17 16. By failing to provide accessible facilities, the defendants denied the
18 plaintiff full and equal access.

19 17. The lack of accessible facilities created difficulty and discomfort for the
20 Plaintiff.

21 18. The defendants have failed to maintain in working and useable
22 conditions those features required to provide ready access to persons with
23 disabilities.

24 19. The barriers identified above are easily removed without much
25 difficulty or expense. They are the types of barriers identified by the
26 Department of Justice as presumably readily achievable to remove and, in fact,
27 these barriers are readily achievable to remove. Moreover, there are numerous
28 alternative accommodations that could be made to provide a greater level of

1 access if complete removal were not achievable.

2 20. Plaintiff will return to the Store to avail himself of its items and to
3 determine compliance with the disability access laws once it is represented to
4 him that the Store and its facilities are accessible. Plaintiff is currently deterred
5 from doing so because of his knowledge of the existing barriers and his
6 uncertainty about the existence of yet other barriers on the site. If the barriers
7 are not removed, the plaintiff will face unlawful and discriminatory barriers
8 again.

9 21. Given the obvious and blatant nature of the barriers and violations
10 alleged herein, the plaintiff alleges, on information and belief, that there are
11 other violations and barriers on the site that relate to his disability. Plaintiff will
12 amend the complaint, to provide proper notice regarding the scope of this
13 lawsuit, once he conducts a site inspection. However, please be on notice that
14 the plaintiff seeks to have all barriers related to his disability remedied. See
15 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
16 encounters one barrier at a site, he can sue to have all barriers that relate to his
17 disability removed regardless of whether he personally encountered them).

18

19 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
20 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
21 Defendants.) (42 U.S.C. section 12101, et seq.)

22 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint.

25 23. Under the ADA, it is an act of discrimination to fail to ensure that the
26 privileges, advantages, accommodations, facilities, goods and services of any
27 place of public accommodation is offered on a full and equal basis by anyone
28 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.

1 § 12182(a). Discrimination is defined, *inter alia*, as follows:

2 a. A failure to make reasonable modifications in policies, practices,
3 or procedures, when such modifications are necessary to afford
4 goods, services, facilities, privileges, advantages, or
5 accommodations to individuals with disabilities, unless the
6 accommodation would work a fundamental alteration of those
7 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

8 b. A failure to remove architectural barriers where such removal is
9 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
10 defined by reference to the ADA Standards.

11 c. A failure to make alterations in such a manner that, to the
12 maximum extent feasible, the altered portions of the facility are
13 readily accessible to and usable by individuals with disabilities,
14 including individuals who use wheelchairs or to ensure that, to the
15 maximum extent feasible, the path of travel to the altered area and
16 the bathrooms, telephones, and drinking fountains serving the
17 altered area, are readily accessible to and usable by individuals
18 with disabilities. 42 U.S.C. § 12183(a)(2).

19 24. When a business provides paths of travel, it must provide accessible
20 paths of travel.

21 25. Here, accessible paths of travel have not been provided.

22 26. When defendants provide parking, they must provide accessible
23 parking.

24 27. Here, accessible parking has not been provided.

25 28. The Safe Harbor provisions of the 2010 Standards are not applicable
26 here because the conditions challenged in this lawsuit do not comply with the
27 1991 Standards.

28 29. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily
 2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 30. Here, the failure to ensure that the accessible facilities were available
 4 and ready to be used by the plaintiff is a violation of the law.

5

6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 8 Code § 51-53.)

9 31. Plaintiff repleads and incorporates by reference, as if fully set forth
 10 again herein, the allegations contained in all prior paragraphs of this
 11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
 12 that persons with disabilities are entitled to full and equal accommodations,
 13 advantages, facilities, privileges, or services in all business establishment of
 14 every kind whatsoever within the jurisdiction of the State of California. Cal.
 15 Civ. Code § 51(b).

16 32. The Unruh Act provides that a violation of the ADA is a violation of the
 17 Unruh Act. Cal. Civ. Code, § 51(f).

18 33. Defendants’ acts and omissions, as herein alleged, have violated the
 19 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
 20 rights to full and equal use of the accommodations, advantages, facilities,
 21 privileges, or services offered.

22 34. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 23 discomfort or embarrassment for the plaintiff, the defendants are also each
 24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 25 (c).)

26 35. Although the plaintiff was markedly frustrated by facing discriminatory
 27 barriers, even manifesting itself with minor and fleeting physical symptoms,
 28 the plaintiff does not value this very modest physical personal injury greater

than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: September 27, 2019 CENTER FOR DISABILITY ACCESS

By:

Ans

Amanda Seabock, Esq.
Attorney for plaintiff